

**TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE**



FISCAL NOTE

SB 3883 - HB 3894

March 3, 2010

SUMMARY OF BILL: Increases the penalty for a fourth driving under the influence (DUI) conviction from a Class E to a Class D felony punishable by a fine of not less than \$10,000 nor more than \$20,000, revocation of the offender's driver's license for five years, and confinement for the entire sentence imposed by the court to be served day-for-day. Increases penalty for a fifth or subsequent DUI conviction from a Class E to a Class C felony punishable by a fine of not less than \$15,000 nor more than \$30,000, requires revocation of the offender's driver's license for 10 years, and requires confinement for the entire sentence imposed by the court to be served day-for-day.

ESTIMATED FISCAL IMPACT:

Increase State Revenue – Not Significant

Increase State Expenditures – \$49,000/One-Time

\$7,424,800/Incarceration*

Increase Local Revenue - \$1,237,500/Recurring

Assumptions:

- Under current law a fourth or subsequent violation is a Class E felony punishable by a fine ranging from \$3,000 to \$15,000, revocation of driver's license for five years, and confinement for less than 150 consecutive days to be served day-for-day up to six years.
- According to the Department of Safety (DOS), 14 computer program changes would be required to capture the fifth or subsequent DUI and to enforce the five-year or ten-year revocation period at a one-time cost of \$49,000 (\$3,500 x 14). DOS statistics show 600 fourth-time offenders for FY08-09. DOS estimates 450 fourth-time offenders and 150 fifth or subsequent offenders. DUI fines are retained by the county in which the violation occurred. Seventy-five percent will not pay fines due to indigence and to the substantial increase in the minimum fine (\$3,000 to \$10,000 for a Class D and \$3,000 to \$15,000 for a Class C) as a result of this bill. The increase to local government revenue derived from fines for fourth-time offenders is estimated to be \$787,500 (450 offenders x \$7,000 increase in minimum fine x 25% paying = \$787,500). The local revenue derived from fines for fifth or subsequent offenders is estimated to be \$450,000 (150 offenders x \$12,000 increase in minimum fine x 25% paying = \$450,000). Total additional revenue

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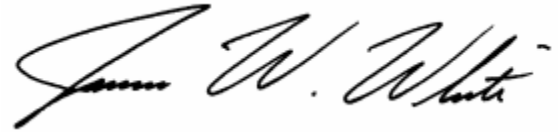
for local governments considering a 75 percent indigency rate is estimated to be \$1,237,500 (\$787,500 + \$450,000).

- According to the Department of Correction (DOC), there has been an average of 136 admissions for fourth or subsequent DUI offenses in each of the past 10 years.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will result in 14 additional offenders in the tenth year. The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 150 offenders.
- DOS estimates 75 percent of the total ($75\% \times 150 = 112.50$) are fourth offenses and the remaining 25 percent ($25\% \times 150 = 37.5$) are fifth or subsequent offenses.
- According to DOC, the average operating cost per offender per day for calendar year 2010 is \$59.86.
- According to DOC, the average length of sentence for a fourth or subsequent DUI offense is 1.87 years less 15 percent sentence reduction credits or 1.59 years. The average time served for a fourth or subsequent DUI offense is 1.15 years.
- The maximum sentence for a Class E standard range I sentence is 2.0 years. The average length of sentence (1.59 years) is 79.5 percent of the maximum sentence allowed. Using the same ratio for the proposed bill, 79.5 percent of a Class D standard range I sentence of four years (3.18 years) less 15 percent sentence reduction credits (2.70 years), a fourth-time offender would serve an additional 2.03 years (3.18 years – 1.15 years). The cost per offender at 3.18 years is \$69,527.39 ($\$59.86 \times 1,161.50$ days). The cost per offender at 1.15 years is \$25,143.59 ($\59.86×420.04 days). The additional cost of increasing the average sentence length by 2.03 years is \$44,383.80 ($\$69,527.39 - \$25,143.59$). The total additional cost for 113 offenders is \$5,015,369.40 ($\$44,383.80 \times 113$).
- The remaining 25 percent (37.5) of DUI offenders would be fifth-time or subsequent and would receive a Class C felony as a result of this bill. Using the same ratio for the proposed bill, 79.5 percent of a Class C standard range I sentence of six years (4.77 years) less 15 percent sentence reduction credits (4.05 years), a fifth-time or subsequent offender would serve an additional 2.9 years (4.05 years – 1.15 years). The cost per offender at 4.05 years is \$88,548.50 ($\$59.86 \times 1,479.26$ days). The cost per offender at 1.15 years is \$25,143.59 ($\59.86×420.04 days). The additional cost of increasing the average sentence length by 2.9 years is \$63,404.91 ($\$88,548.50 - \$25,143.59$). The total additional cost for 38 offenders is \$2,409,386.58 ($\$63,404.91 \times 38$).
- The total additional incarceration cost is \$7,424,755.98 ($\$5,015,369.40 + \$2,409,386.58$).
- Any impact on state trial courts can be accommodated within existing judicial resources.
- Based on the Fiscal Review Committee's 2008 study of incarceration costs and fines, collection of fines for felony offenses is negligible. There will not be a significant increase in state revenue as a result of the mandatory minimum fines for these offenses.

**Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, reading "James W. White". The signature is fluid and cursive, with the first name "James" written in a smaller, more compact script than the last name "White".

James W. White, Executive Director

/lsc